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SURFACE LEASE FROM SWISHER COAL COMPANY

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## SURFACE LEASE FROM SWISHER COAL CO.

### SURFACE LEASE AGREEMENT

This SURFACE LEASE AGREEMENT, made and entered into this 30<sup>th</sup> day of September, 1981, by and between Beaver Creek Coal Company, a Utah Corporation in good standing, whose address is 1109 South Carbon Avenue, Price, Utah, hereinafter called "Lessor", and Genwal Coal Company, Inc., a Virginia corporation having its principal place of business at Box 1201, Huntington, Utah, hereinafter called "Lessee".

#### WITNESSETH:

That Lessor, for and in consideration of the rent to be paid, the covenants to be kept and the mutual agreements of the parties hereto, does hereby lease and let unto Lessee the surface only overlying the following described lands situated in Emery County, Utah:

Township 16 South, Range 7 East

Section 5: All that part of the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  lying North of Crandall Creek.

hereinafter referred to as "Leased Premises", such grant to be upon the following terms, provisions and conditions:

1. TERM: The term of this agreement, subject to termination as set forth in paragraph 3 herein, shall be five (5) years, commencing on the above date. Lessee may extend this lease for five (5) successive five (5)-year terms by notifying Lessor in writing at lease 60 days prior to the expiration date of the then current term and Lessor and Lessee shall be bound by the same covenants and mutual agreements as are herein contained, provided however, that Lessor shall have the option of increasing the rental for every five-year term as set forth in paragraph (2) herein.
2. RENT: Lessee covenants and agrees to pay to Lessor as rent, the sum of five hundred dollars (\$500.00) per year for the first five (5)-year term, said rent to be paid upon the date of execution and each anniversary date thereafter. At the end of the first five (5)-year term and every five (5)-year term thereafter, for so long as this lease is in effect, Lessor may increase the rental for the succeeding five (5)-year term. Lessor shall notify Lessee of any such increases by giving written notice to Lessee at least 90 days prior to the end of any five (5)-year term.
3. TERMINATION: Either Lessor or Lessee may terminate this agreement by notifying the other party in writing at least ninety (90) days prior to the proposed termination date. Lessor shall not be obligated to return any rent paid by Lessee. Prior to the termination date, Lessee shall remove all coal, or any other material or structure it has placed on the Leased Premises and shall reclaim the Leased Premises to the satisfaction and approval of

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Lessor, the Office of Surface Mining, the Utah Division of Oil, Gas and Mining and the U.S. Forest Service.

4. USE AND MAINTENANCE: Lessee shall have full use of the Leased Premises including the right to stockpile and remove coal and to remove any vegetation necessary to make the Leased Premises suitable for its intended use. Lessor shall have no responsibility whatsoever for Lessee's property located on the Leased Premises. Lessee agrees not to use or allow others to use the Leased Premises in violation of any applicable state, local or federal law or regulation.
5. ENVIRONMENTAL IMPACT: Lessee shall be solely responsible for all impacts to the environment caused by Lessee's use of the Leased Premises. The term environment shall include, but not be limited to, the soils, vegetation, wildlife, ground and surface water quality and quantity, air quality, and historical, cultural and paleontological resources. Lessee shall not store or dispose of any hazardous or toxic waste on or around the Leased Premises.
6. WATER MONITORING STATIONS: Lessee agrees to construct and maintain, solely at its own expense, two stream gauging stations on Crandall Canyon Creek, upon the specifications as will be set forth by Lessor. Lessor shall notify Lessee of said specifications within a reasonable time after execution of this agreement. Upon Lessor's request, Lessee shall furnish Lessor with data derived from the water stations.
7. RIGHTS RESERVED: All rights not expressly herein leased or granted to Lessee are excepted and reserved to Lessor, including, but not limited to all rights pertaining to coal, oil, gas and all other minerals, along with such rights as may be useful, desirable or convenient for the enjoyment of such reserved rights and interests.  
  
Lessor reserves the right to use the existing road that crosses the Leased Premises and extends East towards Highway 31.
8. ROAD USAGE: Lessee agrees to allow Lessor the use of the existing road that crosses lands now or later owned or leased by Lessee and extends East towards Highway 31, said lands located in Sections 4 and 5 of Township 16 South, Range 7 East.
9. LICENSES OR PERMITS: Lessee, at its sole expense, shall obtain all licenses or permits necessary for its operations on the Leased Premises.
10. TAXES: For so long as this lease is in effect, Lessor shall pay all real property taxes and Lessee shall reimburse Lessor for the amount paid. Real property taxes for 1981 shall be prorated as

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of the execution date hereof. Lessee shall pay all taxes levied on any of Lessee's personal property.

11. INSPECTION: Lessor shall have the right to inspect the Leased Premises at all reasonable hours.
12. ASSIGNMENT: The rights of Lessor may be assigned in whole or in part but no rights of Lessee shall be assigned or subleased without Lessor's prior written consent.
13. NO WARRANTY: Notwithstanding anything contained or implied in this lease to the contrary, it is distinctly understood and agreed that Lessor does not expressly or impliedly warrant title to or the condition of the Leased Premises.
14. INDEMNITY: Lessee agrees to pay Lessor for any and all damages or losses of whatever nature, arising out of or in any way connected with Lessee's operations hereunder, and Lessee agrees to indemnify, save, protect, keep and hold Lessor harmless, free and clear of any and all claims, demands and causes of action which may be asserted by reason of or in connection with Lessee's use of the Leased Premises herein described, including all costs and expenses of every kind, paid or incurred by Lessor in defense of any and all lawsuits and claims resulting therefrom.

IN WITNESS WHEREOF, the parties have executed this Surface Lease Agreement, effective as of the date set out above.

LESSEE:

LESSOR:

Genwal Coal Company, Inc.

Beaver Creek Coal Company

By: William C. Wollen  
William Wollen

By: Max Robb  
Max Robb

TITLE: Vice President

TITLE: President

STATE OF Utah )  
 ) ss  
COUNTY OF Emery

On this the 30 day of September, 1981, personally appeared before me William Wollen, who being by me duly sworn, did say that he is the Vice President of Genwal Coal Company, Inc., and that said instrument was signed in behalf of said Corporation by authority of a resolution of its Board of Directors and said William Wollen acknowledged to me that said Corporation executed the same.

Witness my hand and official seal:

Notary Public

My commission expires: 2-3-85

STATE OF )  
 ) ss  
COUNTY OF )

On this the 30th day of October, 1981, personally appeared before me Max Robb, who being by me duly sworn, did say that he is the President of Beaver Creek Coal Company, and that said instrument was signed in behalf of said Corporation by authority, and Max Robb acknowledged to me that he as President executed the same.

Witness my hand and official seal:

  
Eric S. Rogers  
Notary Public

My commission expires:

7-18-84